

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE,  
NO. 99-09, PATRICIA KINSEY

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SC CASE NO. 96,629

**JUDICIAL QUALIFICATIONS COMMISSION'S MOTION  
FOR LEAVE TO FILE SUPPLEMENTALS BRIEFS BASED  
ON RECENT DECISION OF THE UNITED STATES SUPREME COURT**

The Judicial Qualifications Commission ("JQC"), by and through its undersigned counsel and pursuant to Fla. R. App. P. 9.300(a), hereby files its Motion for Leave to File Supplemental Briefs. As grounds therefor, the JQC states as follows:

1. This case arises out of a Notice of Formal Charges filed by the JQC on September 27, 1999, alleging that during the election campaign for the office she now occupies, Respondent, Judge Patricia Kinsey, engaged in a pattern of inappropriate conduct under the Code of Judicial Conduct.

2. The case was tried before the Hearing Panel on June 12-13, 2000. On October 18, 2000, the Hearing Panel issued its Findings, Conclusions and Recommendations. The Hearing Panel found Judge Kinsey guilty on eight of the eleven charges and recommended that she be publically reprimanded and fined \$50,000.00 for conduct growing out of her election campaign.

3. This Court entered its Order to Show cause directed to Judge Kinsey on October 30, 2000. Following briefing, the case was orally argued in this Court on October 4, 2001.

4. Thereafter, on December 3, 2001, the United States Supreme Court granted a petition for *writ of certiorari* in *Republican Party of Minnesota, et al. v. Kelly, et al.*, 151 L. Ed. 2d 561, 122 S. Ct. 643 (2001).<sup>1</sup>

5. In *White*, the question presented was whether the First Amendment “permitted the Minnesota Supreme Court to prohibit candidates for judicial office in that State from announcing their views on disputed legal and political issues.” See Slip Opinion at 1. The particular judicial canon at issue, Canon 5(A)(d)(i) of the Minnesota Code of Judicial Conduct, or the so-called “announce clause,” provides that a candidate for judicial office shall not “announce his or her views on disputed legal or political issues.” See Slip Opinion at 2, 4.

6. On June 27, 2002, the Supreme Court rendered its decision in *White*. As further elaborated upon in the decision, the Supreme Court held that “[t]he Minnesota Supreme Court’s canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment.” *Id.* at 22.<sup>2</sup>

7. Nevertheless, in *White*, the Supreme Court distinguished the Minnesota Code of Judicial Conduct’s “pledges or promises” clause, “which *separately* prohibits

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<sup>1</sup> By Order dated March 15, 2002, the style of the case was corrected to *Republican Party of Minnesota v. White*, 152 L. Ed. 205, 122 S. Ct. 1229 (2002).

<sup>2</sup> Both the JQC and Respondent have previously filed in this Court Notices of Supplemental Authority of the *White* decision.

judicial candidates from making ‘pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office’” as “a prohibition that [was] not challenged [t]here and on which [the Court] express[ed] no view.” *Id.* (emphasis in original).

8. Although the JQC acknowledges that *White* has a direct bearing on this case, it submits that several of the Hearing Panel’s findings are not facially implicated by *White*. For example, the Hearing Panel found that several of candidate Kinsey’s statements violated Florida’s analogue of Minnesota’s “pledges or promises” clause, which is embodied in Section 7A(3)(d)(i) of the Florida Code of Judicial Conduct. Canon 7A(3)(d)(i), provides that:

- (3) A candidate for judicial office:
  - (d) shall not
    - (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office .  
...

In *White*, the Supreme Court expressly held that its decision expressed no view on the constitutionality of the virtually identical provision under Minnesota’s Code of Judicial Conduct.

9. Similarly, the Hearing Panel found that candidate Kinsey also violated Section 7A(3)(d)(iii) of the Code of Judicial Conduct, which provides that a candidate shall not “knowingly misrepresent the identity, qualifications, present position or other

fact concerning the candidate or an opponent . . . .” The Supreme Court’s opinion in *White* does not address whether knowingly false and misleading statements by judicial candidates are protected speech under the First Amendment.<sup>3</sup>

10. In summary, although *White* does have some bearing on this court’s consideration of the Hearing Panel’s Findings and Recommendation, this Court should permit supplemental briefing on which *specific* canons of the Florida Code of Judicial Conduct are affected by the U.S. Supreme Court’s decision in *White* and the extent to which that decision impacts the Findings and Recommendations of the Hearing Panel of the JQC.

WHEREFORE, the Judicial Qualifications Commission, by and through its undersigned counsel and pursuant to Fla. R. App. P. 9.300(a), respectfully prays that its Motion for Leave to File Supplemental Briefs Based on Recent Decision of the United States Supreme Court be granted and that a briefing schedule be set forth for the parties.

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<sup>3</sup> The Hearing Panel also found that candidate Kinsey violated Canons 3B(5) and 3B(9) of the Code of Judicial Conduct because of campaign statements she made regarding pending cases. Presumably, those canons are not implicated by the Supreme Court’s decision in *White*.

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **JQC'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEFS BASED ON RECENT DECISION OF THE UNITED STATES SUPREME COURT** has been furnished by U.S. Mail to **BROOKE S. KENNERLY**, Executive Director, Judicial Qualifications Commission, Mount Vernon Square, 1110 Thomasville Road, Tallahassee, FL 32309; **THOMAS C. MacDONALD, JR., ESQ.**, General Counsel, 100 N. Tampa Street, Suite 2100, Tampa, FL 33602; **MARVIN E. BARKIN, ESQ.**, Trenam, Kemker, Scharf, Barkin, Frye, O'Neill, & Mullis, P.A., Post Office Box 1102, Tampa, FL 33601; **JOHN R. BERANEK, ESQ.**, Counsel, Hearing Panel, Ausley & McMullen, 227 South Calhoun St., P.O. Box 391, Tallahassee, FL 32301; **THE HONORABLE JAMES R. JORGENSEN**, Third District Court of Appeal, 2001 SW 117th Avenue, Miami, FL 33175-1716; and **ROY M. KINSEY**,

**JR.**, Kinsey, Troxel, Johnson & Walborsky, P.A., 438 E. Government St., Pensacola,  
FL 32501, this \_\_\_\_\_ day of JULY, 2002.

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Attorney